

SENATE BILL NO. 461

INTRODUCED BY E. FRANKLIN

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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PHYSICIANS TO OBTAIN WRITTEN INFORMED
CONSENT FROM PATIENTS RECEIVING A HYSTERECTOMY; ~~PROVIDING RULEMAKING AUTHORITY TO~~
~~THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES~~ REQUIRING THE BOARD OF MEDICAL
EXAMINERS TO ADOPT RULES THAT ESTABLISH PROCEDURES TO OBTAIN CONSENT AND THAT
INDICATE MEDICALLY JUSTIFIABLE REASONS FOR A HYSTERECTOMY; AND PROVIDING THAT
FAILURE TO OBTAIN WRITTEN INFORMED CONSENT TO PERFORM A HYSTERECTOMY IS
UNPROFESSIONAL CONDUCT."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Written informed consent for performance of hysterectomy -- failure**
constitutes unprofessional conduct. (1) Prior to performance of a hysterectomy, a physician shall obtain
verbal and written informed consent. The informed consent procedure must ensure that at least the
following information is given to the patient verbally and in writing:

~~(a) advice that the individual is free to withhold or withdraw consent to the procedure at any time~~
~~before the hysterectomy or treatment and without affecting the right to future care or treatment and~~
~~without the loss or withdrawal of any state-funded or federally-funded program benefits to which the~~
~~individual might be otherwise entitled;~~

~~———— (b) a description of the type or types of surgery and other procedures involved in the proposed~~
~~hysterectomy and a description of any known available and appropriate alternatives to the hysterectomy~~
~~itself;~~

~~———— (c) as provided in subsection (2), advice that the hysterectomy procedure is considered to be~~
~~irreversible and that infertility will result;~~

~~———— (d) a description of the discomforts and risks that may accompany or follow the performing of the~~
~~procedure, including an explanation of the type and possible effects of any anesthetic to be used;~~

~~———— (e) a description of the benefits or advantages and the side effects or disadvantages that may be~~
~~expected as a result of the hysterectomy;~~

- 1 ~~—— (f) the approximate length of the hospital stay;~~
2 ~~—— (g) the approximate length of time for recovery; and~~
3 ~~—— (h) the financial cost to the patient of the physician's fee.~~

4 (A) A DESCRIPTION OF THE THERAPEUTIC MODALITIES, INCLUDING SURGICAL PROCEDURES, AND A DESCRIPTION
5 OF KNOWN AVAILABLE NONSURGICAL ALTERNATIVES TO HYSTERECTOMY;

6 (B) A DESCRIPTION OF THE ADVANTAGES, DISADVANTAGES, AND RISKS OF THE PROCEDURE OR TREATMENT AND
7 THE POTENTIAL PHYSIOLOGICAL EFFECTS, INCLUDING ISSUES REGARDING THE ONSET OF MENOPAUSE, INFERTILITY, OR
8 STERILITY AS APPROPRIATE TO THE CLINICAL CONDITION;

9 (C) A DESCRIPTION OF ASPECTS OF RECOVERY AND POTENTIAL CONDITIONS THAT MAY FOLLOW RECOVERY.

10 (2) A patient shall sign a written statement prior to the performance of the hysterectomy
11 procedure, indicating that the patient has read and understood the written information provided pursuant
12 to subsection (1) and that this information has been discussed with the patient by the patient's physician
13 or the physician's designee. ~~The statement must indicate that the patient has been advised by the patient's~~
14 ~~physician or a designee that the hysterectomy will render the patient permanently sterile and incapable of~~
15 ~~having children and will result in menopausal symptoms, unless the patient has been previously sterile or~~
16 ~~is menopausal.~~

17 (3) The informed consent procedure does not pertain when the hysterectomy is performed in a
18 life-threatening emergency situation in which the physician determines that prior written informed consent
19 is not possible. In this case, a statement, handwritten and signed by the physician, certifying the nature
20 of the emergency must be made.

21 (4) The board of medical examiners ~~may~~ SHALL adopt rules establishing the verbal and written
22 informed consent procedures that must be obtained prior to the performance of a hysterectomy that
23 indicate medically accepted justifications for performance of a hysterectomy pursuant to this section.

24 ~~(5) The failure of a physician to inform a patient by means of written consent, in layperson's~~
25 ~~language and in a language understood by the patient, of the alternative effective methods of treatment~~
26 ~~that may be medically advisable when a hysterectomy is to be performed constitutes unprofessional~~
27 ~~conduct within the meaning of chapter 1 and this chapter.~~

28 (5) FAILURE OF A PHYSICIAN OR SURGEON TO OBTAIN WRITTEN INFORMED CONSENT AS PROVIDED IN SUBSECTION
29 (1) CONSTITUTES UNPROFESSIONAL CONDUCT. THE CONSENT PROCESS MUST BE CONDUCTED IN A MANNER CONSISTENT
30 WITH LAYPERSON LANGUAGE SO THAT AN INDIVIDUAL WHO HAS NO MEDICAL TRAINING IS ABLE TO UNDERSTAND THE

1 INFORMATION.

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3 NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an
4 integral part of Title 37, chapter 3, part 3, and the provisions of Title 37, chapter 3, part 3, apply to
5 [section 1].

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